U.S. Department of Labor

Office of Administrative Law Judges
Heritage Plaza Bldg. - Suite 530
111 Veterans Memorial Blvd
Metairie, LA 70005

(504) 589-6201
(504) 589-6268 (FAX)

Issue Date: 28 April 2003

Case No.: 2002-LHC-0989

OWCP No.: 01-147251

In the Matter of:

MICHAEL COPPOLA,
Claimant

v.

LOGISTEC OF CONNECTICUT,
Employer

and

SIGNAL MUTUAL
c/o LAMORTE, BURNS & CO.,
Carrier

APPEARANCES:

DAVID A. KELLY, ESQ.,
On Behalf of the Claimant

PETER D. QUAY, ESQ.,
On Behalf of the Employer/Carrier

BEFORE: RICHARD D. MILLS
Administrative Law Judge

DECISION AND ORDER – AWARDING BENEFITS

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, et seq., (the "Act" or

"LHWCA"). The claim is brought by Michael Coppola, Claimant, against his former employer, Logistec of Connecticut ("Logistec"), and its carrier, Signal Mutual, Respondents. Claimant asserts he suffered employment-related injuries to his hip and wrist for which Logistec is responsible. A hearing was held on October 7, 2002 in New London, Connecticut, at which time the parties were given the opportunity to offer testimony, documentary evidence, and to make oral argument. The following exhibits were received into evidence[1]:

1) Claimant's Exhibits Nos. 1-15;[2] and

2) Respondent's Exhibits Nos. 1-13.[3]

This decision is being rendered after giving full consideration to the entire record.

STIPULATIONS[4]

The Court finds sufficient evidence to support the following stipulations:

1) This case is governed by the LHWCA.

2) An accident arising out of and in the course of employment occurred on June 15, 1999, while an employer/employee relationship existed between Claimant and Employer.

3) Employer was notified of the accident on June 15, 1999.

4) An Informal Conference was held on September 4, 2001.

5) Carrier has paid benefits of temporary total disability beginning June 16, 1999 at a weekly rate of $217.95.

---

[1] The following abbreviations will be used in citations to the record: CX - Claimant's Exhibit, RX - Respondent's Exhibit, and TR - Transcript of the Proceedings.

[2] Claimant's Exhibits 13, 14, and 15 were received post-hearing. CX-13 consists of the wage records of Joseph Kochiss. CX-14 is a medical report from Helen Hart-Gai, APRN. CX-15 is correspondence from Anthony Salvo, M.D.

[3] Respondents' Exhibit 13 was received post-hearing. RX-13 consists of materials from the International Longshoremen's Association AFL-CIO General Longshore and Terminal Workers Local 1398, the union representing the docks in this case.

[4] TR. 6-8.

6) Carrier has paid medical benefits on behalf of Claimant.

7) Claimant reached maximum medical improvement in this case on January 18, 2001.

ISSUES

The unresolved issues in these proceedings are:

(1) Extent of Disability;

(2) Average Weekly Wage;

(3) Reasonable and Necessary Medical Benefits;

(4) Section 8(f) Special Fund Relief; and

(5) Attorney's Fees.

SUMMARY OF THE EVIDENCE

I. TESTIMONY

Michael Coppola

Mr. Coppola was born on April 16, 1948. TR. 18. When he was 19 years old, Mr. Coppola was drafted by the U.S. Army for service in the Vietnam War. TR. 20. Mr. Coppola served in Vietnam from April 4, 1968 until April 4, 1969. TR. 21. He obtained his GED while in the Army and subsequently attended South Central Community College, but did not earn a degree. TR. 21. After South Central Community College, Mr. Coppola worked for his brother-in-law doing rugs, tile, and floors. TR. 21.

In August of 1978, Mr. Coppola began working for New Haven Terminal on the docks in New Haven Harbor. TR. 22. He testified that New Haven Harbor and Bridgeport Harbor are both covered by the same union, but originally were separate ports run by separate companies, CILCO and New Haven Terminal. TR. 35-36. According to Mr. Coppola, those two companies came together at some point and operated as New Haven Terminal. TR. 36. New Haven Terminal was succeeded by Logistec of Connecticut, which currently runs the docks. TR. 36.

Mr. Coppola testified that he worked as a laborer for New Haven Terminal and that his work for New Haven Terminal involved mostly the unloading of cargo from ocean-going ships. TR. 22. Mr. Coppola testified that a laborer's work while in the hold included throwing chains weighing several hundred pounds, crowbarring, and working with wires. TR. 22-23. A laborer's work while on the docks included unhooking and handling the cargo. TR. 22-23. Mr. Coppola also worked as a hatch boss a few times over the years, a position one step above a laborer. TR. 34.

Mr. Coppola testified that he worked at the harbor first from 1978 to 1984. TR. 61-63. He quit in 1984 after a disagreement with his walking boss. TR. 61-62. He then worked at the harbor from 1988 to 1992. TR. 61-63. He stopped working at the harbor in 1992 because of an injury. TR. 63. He returned in 1994, but worked only a couple of days before quitting due to a disagreement over his positioning in the union. TR. 59, 61-63, 72. Mr. Coppola testified that he did not work at the harbor at all between 1994 and 1999. TR. 60.

Mr. Coppola worked two days at the harbor in 1999. TR. 63. Mr. Coppola returned to the harbor on June 14, 1999, when he began working for Logistec as a laborer. TR. 25, 33. On June 14, 1999, he worked on the dock handling cargo as it was unloaded from the ship. TR. 33. On June 15, 1999, Mr. Coppola suffered the injury at issue. TR. 31. At the time of his injury, Mr. Coppola was working as a laborer in the hold unloading copper cathodes. TR. 36-37. He was climbing down the copper cathodes when he fell and broke his left hip and left wrist. TR. 40, 52. Mr. Coppola testified that he fell about six to eight feet. TR. 40. An ambulance was called for him and he was taken to Yale-New Haven Hospital. TR. 43.

At Yale-New Haven Hospital, surgery was performed on his hip and a cast was placed on his wrist. TR. 43, 45. He was in the hospital for four days and stayed in a convalescent home for 2 weeks for therapy. TR. 45. Mr. Coppola testified that he was being treated by the New Haven Orthopedic Group, namely Drs. Irving and Bernstein, for his hip and wrist respectively. TR. 46-47. Due to an improper setting of his wrist, his wrist was re-broken about three weeks after his injury, and a plate was surgically inserted. TR. 46-47. He was placed in a cast for 3-4 weeks after the second treatment on his wrist. TR. 47. Mr. Coppola then developed carpal tunnel syndrome and underwent carpal tunnel surgery. TR. 47.

According to Mr. Coppola, the June 15, 1999 fall also re-aggravated low back and equilibrium problems he had developed in the past. TR. 48. He testified that his back felt worse after the June 15, 1999 accident and that he now has difficulty going up stairs and getting in and out of cars. TR. 48. He also testified that his equilibrium was good before the fall but that he now generally must use a cane for walking. TR. 49. He is currently

receiving social security disability benefits and is under pain medication for his hip and back. TR. 50-51. Mr. Coppola is also undergoing pain management once a month. TR. 64. Mr. Coppola testified that following his June 15, 1999 accident, he was told by Dr. Irving that he could not go back to work. TR. 49.

Mr. Coppola also testified regarding numerous prior injuries. He testified that he suffered an injury to his knee or foot on June 14, 1980 while clearing dunnage. TR. 25; CX-7. In May of 1990, Mr. Coppola fell while leaving work, causing him to injure his leg and miss about 3 months of work. TR. 26. On September 23, 1992, Mr. Coppola injured his back while lifting chains as a laborer on the docks, causing him to miss work for a year or two. TR. 26-27. Mr. Coppola testified that the treating physician for his September 23, 1992 accident, Dr. Kenneth Kramer, indicated that the injury caused a 15% permanent disability to his neck and a 10% impairment to his low back. TR. 27-28. According to Mr. Coppola, his neck has been bothering him since the 1992 incident. TR. 28. However, until the June 15, 1999 incident, his back had not bothered him since 1992. TR. 28.

Mr. Coppola also indicated that he has a hearing problem in his right ear, due to a motorcycle accident in the early 1970s in which he fractured his skull and pelvis. TR. 29, 52. According to Mr. Coppola, he also had equilibrium problems for a few years as a result of the motorcycle accident. TR. 29-30. In 1996, Mr. Coppola suffered a broken ankle when he fell off a ladder while painting his sister's house. TR. 30, 70-71. The injury required surgery and insertion of a plate, and Mr. Coppola was laid up for about 3 months after the surgery. TR. 30. Mr. Coppola testified that his foot has been much better since the plate was removed. TR. 31. For the past 20 to 30 years, Mr. Coppola also has had a broken left pinkie finger, rendering it ineffective. TR. 31.

In addition, Mr. Coppola testified that he is 70% disabled with post-traumatic stress disorder ("PTSD"). TR. 32. According to Mr. Coppola, he has been receiving regular psychiatric treatment at the Veteran's Administration ("VA") since the early 1990s. TR. 31-32. At the time of the hearing, Mr. Coppola visited his doctor every two weeks for his PTSD. TR. 51. Mr. Coppola testified that the June 15, 1999 accident caused his PTSD to increase by 20%, from a 50% rating to a 70% rating. TR. 50, 53-54.

Mr. Coppola is not married and lives downstairs from his 90 year-old aunt. TR. 45. He testified that when he began working on the docks in 1978, he worked whenever ships came into port and would not work if the ships did not come in. TR. 55. Mr. Coppola testified that the New Haven Port has a union for its employees, but that he never actually joined because he did not meet the work-hour and time requirements for admission. TR. 34-35, 55-56. Following his September 1992 back injury, Mr. Coppola was out of work apparently until he returned to the docks for a couple of days in 1994. TR. 59, 63, 66-72.

Regarding his employment between 1994 and 1999, Mr. Coppola testified that he worked about six months as a truck driver for a plumbing company, Windustrial. TR. 60-61, 71. He left Windustrial after refusing to drive the truck on an icy day. TR. 61. After Windustrial, Mr. Coppola worked for his sister about three days a week at her business, Del Lockwood and Sons (phonetic), doing tile, rugs, floors, bathrooms, and kitchens. TR. 65, 69, 72. Mr. Coppola also did painting work with a friend. TR. 70, 72. Aside from the above, Mr. Coppola testified that he did not have any other significant employment between 1994 and 1999. TR. 72. Mr. Coppola opined that between 1994 and 1999, he was out of work more than he was working. TR. 73.

II. MEDICAL EVIDENCE

1. Testimony and Reports

MacEllis Glass, M.D.

Dr. Glass graduated from Harvard Medical School in 1955 and has been in the private practice of orthopedic surgery since 1961. RX-12, pp. 4-5. He was board-certified in 1963 and thereafter joined the orthopedic staff of Yale Medical School, where he was a faculty member until 1997, at which time he retired for age. RX-12, p. 5.

Dr. Glass examined Mr. Coppola on July 9, 2001. RX-12, p. 5, Deposition Exhibit 1 for Respondent. Dr. Glass understood that on June 15, 1999, Mr. Coppola had fallen at work and sustained a comminuted fracture of his distal left radius and ulna and an intertrochanteric fracture of his left hip. RX-12, p. 6. Dr. Glass testified that Mr. Coppola was treated with The Orthopedic Group at Yale, namely Dr. John F. Irving for his hip and Dr. Richard A. Bernstein for his wrist. RX-12, pp. 6-7. Dr. Glass testified that he reviewed the June 1, 2000 report of Dr. Bernstein and the January 18, 2001 report of Dr. Irving. RX-12, pp. 10-11. Dr. Glass opined that Mr. Coppola was status post-operative repair of a intertrochanteric left hip fracture and status post-internal fixation of a severe Colles' fracture of the left wrist. RX-12, p. 8.

Dr. Glass opined that by the time he examined Mr. Coppola, Mr. Coppola had achieved as much improvement as his physicians could provide him. RX-12, pp. 12-13, 23; Deposition Exhibit 1 for Respondent. Dr. Glass agreed with Dr. Irving's assessment that a 15% permanent impairment was appropriate for Mr. Coppola's hip following the June 15, 1999 accident. RX-12, p. 13; Deposition Exhibit 1 for Respondent. Dr. Glass opined that a 20% impairment rating was appropriate for Mr. Coppola's left wrist based on structural damage and Mr. Coppola's residual neurological symptoms. RX-12, p. 14; Deposition Exhibit 1 for Respondent.

Dr. Glass testified that given his physical and psychological conditions, Mr. Coppola could not return to work as a longshoreman. RX-12, pp. 12, 21, 25-26. Dr. Glass opined that Mr. Coppola was capable of work from the light to selected category. RX-12, pp. 11-12. Dr. Glass explained that Dr. Irving had indicated Mr. Coppola should have been doing light to selected work all along and that Mr. Coppola's work status since has not changed much. RX-12, p. 16. Dr. Glass testified that he would restrict Mr. Coppola from repetitive gripping or heavy lifting with the left wrist, repetitive squatting or assumption of awkward positions, heavy lifting beyond 40 pounds, and standing or walking for a full eight hour day. RX-12, p. 12.

Dr. Glass indicated that based on July 1, 1993 and December 9, 1993 reports from Dr. Kenneth Kramer, Mr. Coppola had a permanent partial physical impairment that pre-existed his injury of June 15, 1999. RX-12, pp. 8-9. Based on these reports, Dr. Glass testified that Mr. Coppola's work injury on June 15, 1999 was not the sole basis for his light to selected work status. RX-12, pp. 14, 16. Dr. Glass indicated that before the June 15, 1999 injury, Mr. Coppola had a bad neck and a bad back and that after the June 15, 1999 injury, he had also a bad knee and a bad wrist. RX-12, p. 15.

Dr. Glass also testified that Mr. Coppola claimed he suffered from post-traumatic stress syndrome prior to his June 15, 1999 accident, as a result of his military service in the Vietnam War. RX-12, pp. 16-17; Deposition Exhibit 1 for Respondent. Dr. Glass testified that had experience with individuals suffering from PTSD after the Korean War, that he is able to recognize the ailment as a physician, and that he found Mr. Coppola's claim credible. RX-12, pp. 19-20. Dr. Glass opined that PTSD is the major influence on Mr. Coppola's life and has been for a long time. RX-12, p. 22.

Dr. Glass opined that Mr. Coppola's psychiatric problem impacts his ability to perform at almost any level, including within the limitations of light to selected work. RX-12, p. 18. Dr. Glass indicated that the medications taken by Mr. Coppola for his psychiatric condition are significant and would certainly preclude working in a risk environment. RX-12, pp. 20-21. When asked about Mr. Coppola's ability to work in light of his post-traumatic stress syndrome, Dr. Glass answered, "I obtained a distinct impression. He's one weird guy." RX-12, p. 17. Dr. Glass indicated that as a matter of human resources, he was surprised at the hiring of Mr. Coppola, explaining that Mr. Coppola presents himself as a victim rather than a person of adept quality. RX-12, pp. 17, 22.

In his report, Dr. Glass indicated that Mr. Coppola was "a highly unlikely candidate to be hired, certainly in his present state." Deposition Exhibit 1 for Respondent. At his deposition, Dr. Glass opined regarding Mr. Coppola that, "it is in the real world unlikely in today's employment climate that somebody in human resources would take him on." RX-12, p. 27. Dr. Glass testified that there are jobs that Mr. Coppola could perform, in which a

person's presence is required more than anything else, but that those jobs are "few and far between." RX-12, p. 28.

2. Reports

St. Raphael's Occupational Health & Treatment Center

According to a September 23, 1992 report by Dr. Joseph P. Connolly, Mr. Coppola reported that he suffered an injury to his back while lifting a heavy object. RX-5, p. 1. Dr. Connolly indicated that Mr. Coppola had a right trapezius and rhomboid strain and that Mr. Coppola would not be able to work. RX-5, pp. 1-2.

In a September 29, 1992 report, Dr. Connolly indicated that Mr. Coppola suffered a neck and right shoulder strain with some question of nerve compression syndrome on the right. RX-5, p. 4; CX-10. Mr. Coppola remained off-duty from work. RX-5, p. 4; CX-10.

Kenneth R. Kramer, M.D.

In a November 2, 1992 report, Dr. Kramer noted that Mr. Coppola was lifting a set of chains on September 23, 1992 when he felt sudden and sharp posterior cervical pain. RX-7, p. 1; CX-12. Dr. Kramer indicated that Mr. Coppola had a resolving cervical strain with radiculitis that should continue to resolve. RX-7, p. 2; CX-12.

In a January 7, 1993 report, Dr. Kramer indicated that Mr. Coppola was continuing to improve overall but nonetheless continued to have some residual neck pain and intermittent extremity radiculitis. RX-7, p. 5. Dr. Kramer indicated that Mr. Coppola was ready to return to work on a light duty basis but was clearly not ready to return to his regular dock work. RX-7, p. 5.

In a March 11, 1993 report, Dr. Kramer indicated that Mr. Coppola's cervical strain syndrome was continuing and that Mr. Coppola should continue on light duty status with a 10 pound lifting restriction. RX-7, pp. 7-8.

In a July 1, 1993 report, Dr. Kramer indicated that Mr. Coppola had plateaued for a long period of time and that it did not appear Mr. Coppola would be able to return to his heavy work as a longshoreman in the foreseeable future. RX-7, p. 12; CX-12. Dr. Kramer opined that Mr. Coppola had a 15% permanent partial impairment of the cervical spine on the basis of his chronic cervical strain syndrome and radiculitis. RX-7, p. 12; CX-12.

In a December 9, 1993 report, Dr. Kramer indicated that Mr. Coppola had a 10% permanent partial impairment of his lumbar spine on the basis of his chronic lumbar strain symptoms and left lower extremity radiculitis. RX-7, p. 17; CX-12.

Veteran's Administration

Records from the VA in May 1996 document that Mr. Coppola suffered from a carpal tunnel condition. RX-8. In addition, VA records from May 1997 until June 1997 document Mr. Coppola's hearing problem. RX-9. A June 16, 1997 report indicated that Mr. Coppola had mild to moderate left sensorineural hearing loss, which may be related to noise exposure during his military service. RX-9, p. 3. The report also indicated that he has a profound hearing loss in his right ear which was related to a non-service-connected skull fracture, reportedly a motorcycle accident in 1971. RX-9, pp. 1, 3.

Mr. Coppola's diagnosis of PTSD is documented in VA records from August 1996 until August 1999. RX-10. A report dated August 28, 1996 indicates that Mr. Coppola suffered from symptoms of depression and PTSD. RX-10, p. 2. In a June 25, 1997 report, Mr. Coppola is diagnosed with, among other things, PTSD. RX-10, p. 6. A March 25, 1998 report indicates that Mr. Coppola had a "30%SC" rating for PTSD. RX-10, p. 15, 17.

A report on June 17, 1999 indicates that Mr. Coppola was unable to make his appointment because Mr. Coppola broke his hip and wrist in a fall at a shipyard. RX-10, p. 46. An August 19, 1999 report indicates that Mr. Coppola reported being more depressed and anxious after the June 15, 1999 accident and that Mr. Coppola had "increased MDD and PTSD sx" since the accident but was stable. RX-10, p. 48.

In a December 2, 2002 report, Mr. Coppola's clinician, Helen Hart-Gai, APRN, indicated that Mr. Coppola suffered from PTSD, secondary to trauma he suffered in combat. CX-14. She also indicated that Mr. Coppola was not employable due to the severity of his symptoms and that it was unlikely Mr. Coppola could be employed in the future given the chronic diagnosis of his PTSD. CX-14.

John F. Irving, M.D.

Mr. Coppola was evaluated by Dr. Irving on June 15, 1999. CX-4. Dr. Irving noted that Mr. Coppola had been working on a ship at New Haven Harbor that day and had fallen down stairs, sustaining a comminuted dorsal displaced and angulated left wrist fracture and a nondisplaced intertrochanteric left hip fracture. CX-4. The report indicates that Dr. Irving performed an open reduction and internal fixation. CX-4. Dr. Irving's preoperative and postoperative diagnoses for Mr. Coppola were both "nondisplaced left intertrochanteric hip fracture." CX-4.

In his January 18, 2001 report, Dr. Irving assigned Mr. Coppola a 15% permanent partial impairment based on his left hip alone. CX-2. Dr. Irving also indicated that Mr. Coppola was totally disabled due to a constellation of medical issues, including post-traumatic stress syndrome from Vietnam, a left ankle fracture, a left wrist fracture, hearing

loss in his right ear, and a 15% permanent partial disability of his spine and back. CX-2. Dr. Irving noted that his recommendation for total disability was based on Mr. Coppola's constellation of medical issues, rather than his hip injury alone. CX-2.

Richard A. Bernstein, M.D.

In a July 8, 1999 report, Dr. Bernstein indicated that Mr. Coppola was referred to him due to concern regarding the healing of his work-related wrist fracture. CX-5. Dr. Bernstein indicated that there was a displaced distal radius fracture in Mr. Coppola's wrist and that Mr. Coppola would seek surgery for his condition. CX-5.

In a July 9, 1999 operative report, Dr. Bernstein indicated for both his preoperative and postoperative diagnoses that Mr. Coppola had a displaced distal radius fracture. CX-4. The operation performed was an "open reduction and internal fixation distal radius with a volar plate." CX-4.

In a December 16, 1999 report, Dr. Bernstein indicated that Mr. Coppola suffered from "bilateral carpal tunnel syndrome, symptomatic on the left." CX-5. Dr. Bernstein indicated that Mr. Coppola would undergo surgery for carpal tunnel release. CX-5.

In a January 18, 2000 operative report, Dr. Bernstein indicated for both his preoperative and postoperative diagnoses that Mr. Coppola suffered from left carpal tunnel syndrome. CX-4. The report indicates that Dr. Bernstein performed an open left carpal tunnel release. CX-4. In an operative note, Dr. Bernstein indicated that the surgery proceeded without complications. CX-5.

In a June 1, 2000 report, Dr. Bernstein described Mr. Coppola's condition as "status post healed distal radius fracture and carpal tunnel release." CX-5. He indicated that Mr. Coppola was at maximum medical improvement for his wrist and estimated Mr. Coppola's impairment at 10% for his hand and wrist. CX-5.

Marc A. Rubenstein, M.D.

Dr. Rubenstein evaluated Mr. Coppola in a psychiatric consultation on August 29, 2002. RX-11, p. 1. Dr. Rubenstein reported that Mr. Coppola has by history a diagnosis of PTSD, indications of depression probably best labeled "dysthymia," and a strong history of substance abuse, currently active for marijuana and alcohol. RX-11, p. 4. Dr. Rubenstein also opined that Mr. Coppola had a possible organic brain disorder. RX-11, p. 4.

Dr. Rubenstein opined that from a social-economic point of view, Mr. Coppola seemed like someone who would inevitably be supported by outside resources, such as his family, the VA, workmen's compensation, or social security. RX-11, p. 4. Dr. Rubenstein

also opined that Mr. Coppola was quite disabled and probably would never work again. RX-11, p. 4. Dr. Rubenstein concurred with Dr. Irving's assessment that Mr. Coppola suffered from a "constellation of disabilities." RX-11, p. 4. Dr. Rubenstein also indicated that while no one factor accounted for Mr. Coppola's low level of functioning, his psychiatric conditions play a major role. RX-11, p. 4.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact and conclusions of law are based upon the Court's observations of the credibility of the witnesses, and upon an analysis of the medical records, applicable regulations, statutes, case law, and arguments of the parties. As the trier of fact, this Court may accept or reject all or any part of the evidence, including that of expert medical witnesses, and rely on its own judgment to resolve factual disputes and conflicts in the evidence. See Todd Shipyards v. Donovan, 300 F.2d 741 (5th Cir. 1962). In evaluating the evidence and reaching a decision, this Court applies the principle, enunciated in Director, OWCP v. Greenwich Collieries, 114 S.Ct. 2251 (1994), that the burden of persuasion is with the proponent of the rule. The "true doubt" rule, which resolves conflicts in favor of the claimant when the evidence is balanced, will not be applied, because it violates § 556(d) of the Administrative Procedure Act. See Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 281, 114 S.Ct. 2251, 2259, 129 L.Ed. 2d 221 (1994).

JURISDICTION AND COVERAGE

This dispute is before the Court pursuant to 33 U.S.C. § 919(d) and 5 U.S.C. § 554, by way of 20 C.F.R §§ 702.331 and 702.332. See Maine v. Brady-Hamilton Stevedore Co., 18 BRBS 129, 131 (1986).

In order to demonstrate coverage under the Longshore and Harbor Workers' Compensation Act, a worker must satisfy both a situs and a status test. Herb's Welding, Inc. v. Gray, 470 U.S. 414, 415-16, 105 S.Ct. 1421, 1423, 84 L.Ed. 2d 406 (1985); P.C. Pfeiffer Co. v. Ford, 444 U.S. 69, 73, 100 S.Ct. 328, 332, 62 L.Ed. 2d 225 (1979). The situs test limits the geographic coverage of the LHWCA, while the status test is an occupational concept that focuses on the nature of the worker's activities. Bienvenu v. Texaco, Inc., 164 F.3d 901, 904 (5th Cir. 1999); P.C. Pfeiffer Co., 444 U.S. at 78, 100 S.Ct. at 334-35, 62 L.Ed. 2d 225.

The situs test originates from § 3(a) of the LHWCA, 33 U.S.C. § 903(a), and the status test originates from § 2(3), 33 U.S.C. § 902(3). See P.C. Pfeiffer Co., 444 U.S. at 73-74, 100 S.Ct. at 332, 62 L.Ed. 2d 225. With respect to the situs requirement, § 3(a) states that the LHWCA provides compensation for a worker whose "disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily

used by an employer in loading, unloading, repairing, or building a vessel)." Id. With respect to the status requirement, § 2(3) defines an "employee" as "any personengaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker . . . ." Id. To be eligible for compensation, a person must be an employee as defined by 2(3) who sustains an injury on the situs defined by 3(a). Id.

In this case, the parties do no contest jurisdiction under the Act. Mr. Coppola worked for Logistec as a laborer who unloaded cargo from ocean-going ships. TR. 25, 33. In addition, the injury at issue occurred while Mr. Coppola was working at New Haven Harbor. TR. 36-41. Therefore, the Court finds that jurisdiction under the Act is proper for this case.

FACT OF INJURY AND CAUSATION

The claimant has the burden of establishing a *prima facie* case of compensability. He must demonstrate that he sustained a physical and/or mental harm and prove that working conditions existed, or an accident occurred, which could have caused the harm. Graham v. Newport News Shipbuilding & Dry Dock Co., 13 BRBS 336, 338 (1981); U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP, 455 U.S. 608, 616, 102 S.Ct. 1312, 1318, 71 L.Ed. 2d 495 (1982). Once the claimant establishes these two elements of his *prima facie* case, § 20(a) of the Act provides him with a presumption that links the harm suffered with the claimant's employment. See Kelaita v. Triple A Machine Shop, 13 BRBS 326 (1981); Hampton v. Bethlehem Steel Corp., 24 BRBS 141, 143 (1990).

After the § 20(a) presumption has been established, the employer must introduce "substantial evidence" to rebut the presumption of compensability and show that the claim is not one "arising out of or in the course of employment." 33 U.S.C. §§ 902(2), 903. Only after the employer offers substantial evidence does the presumption disappear. Del Vecchio v. Bowers, 296 U.S. 280, 286, 56 S.Ct. 190, 193 (1935). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept to support a conclusion. Sprague v. Director, OWCP, 688 F.2d 862, 865 (1st Cir. 1982). If the employer meets its burden, the presumption disappears, and the issue of causation must be resolved based upon the evidence as a whole. Kier v. Bethlehem Steel Corp. 16 BRBS 128, 129 (1984); Devine v. Atlantic Container Lines, G.I.E., 25 BRBS 15, 21 (1991).

Mr. Coppola asserts that he injured his left hip and left wrist on June 15, 1999 in an incident arising out of and in the course of his employment with Logistec. His assertion is not disputed by Respondents and is fully supported by the evidence. TR. 6-8, 25, 33, 36-41. Therefore, the Court finds that Mr. Coppola has established a *prima facie* case of compensability and that Respondents have not rebutted the § 20(a) presumption of causation. Given the foregoing, the Court finds that Mr. Coppola suffered a work-related injury to his left hip and left wrist on June 15, 1999.

NATURE/EXTENT OF DISABILITY AND MAXIMUM MEDICAL IMPROVEMENT

Disability under the Act means, "incapacity as a result of injury to earn wages which the employee was receiving at the time of injury at the same or any other employment." 33 U.S.C. § 902(10). Therefore, in order for a claimant to receive a disability award, he must have an economic loss coupled with a physical or psychological impairment. Sproull v. Stevedoring Servs. of America, 25 BRBS 100, 110 (1991). Under this standard, an employee will be found to have no loss of wage earning capacity, a total loss, or a partial loss. The burden of proving the nature and extent of disability rests with the claimant. Trask v. Lockheed Shipbuilding Constr. Co., 17 BRBS 56, 59 (1980).

The nature of a disability can be either permanent or temporary. A disability classified as permanent is one that has continued for a lengthy period of time and appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. SGS Control Servs. v. Director, OWCP, 86 F.3d 438, 444 (5th Cir. 1996). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement. Trask, 17 BRBS at 60. Any disability suffered by the claimant before reaching maximum medical improvement is considered temporary in nature. Berkstresser v. Washington Metro. Area Transit Auth., 16 BRBS 231 (1984); SGS Control Servs., 86 F.3d at 443.

The date of maximum medical improvement is the traditional method of determining whether a disability is permanent or temporary in nature. See Turney v. Bethlehem Steel Corp., 17 BRBS 232, 235 n.5, (1985); Trask, 17 BRBS at 60; Stevens v. Lockheed Shipbuilding Co., 22 BRBS 155, 157 (1989). The date of maximum medical improvement is the date on which the employee has received the maximum benefit of medical treatment such that his condition will not improve. This date is primarily a medical determination. Manson v. Bender Welding & Mach. Co., 16 BRBS 307, 309 (1984). It is also a question of fact that is based upon the medical evidence of record, regardless of economic or vocational consideration. Louisiana Ins. Guar. Ass'n. v. Abbott, 40 F.3d 122, 29 BRBS 22 (CRT) (5th Cir. 1994); Ballesteros v. Willamette Western Corp., 20 BRBS 184, 186 (1988); Williams v. General Dynamic Corp., 10 BRBS 915 (1979).

In this case, the parties have stipulated that Mr. Coppola reached maximum medical improvement for his June 15, 1999 injuries on January 18, 2001. TR. 6-8. This stipulation is supported by the medical evidence in this case. CX-2; CX-5. Therefore, the Court finds that Mr. Coppola's disability with respect to his June 15, 1999 injuries became permanent on January 18, 2001.

The extent of disability can be either partial or total. To establish a *prima facie* case of total disability, the claimant must show that he cannot return to his regular or usual

employment due to his work related injury. See Manigault v. Stevens Shipping Co., 22 BRBS 332 (1989); Harrison v. Todd Pac. Shipyards Corp., 21 BRBS 339 (1988). Total disability becomes partial on the earliest date that the employer establishes suitable alternative employment. Rinaldi v. General Shipbuilding Co., 25 BRBS 128 (1991). To establish suitable alternative employment, an employer must show the existence of realistically available job opportunities within the geographical area where the employee resides which he is capable of performing, considering his age, education, work experience, and physical restrictions, and which he could secure if he diligently tried. New Orleans Stevedores v. Turner, 661 F.2d 1031 (5th Cir. 1981); McCabe v. Sun Shipbuilding & Dry Dock Co., 602 F.2d 59 (3d Cir. 1979). For the job opportunities to be realistic, however, the employer must establish their precise nature, terms, and availability. Thompson v. Lockheed Shipbuilding & Constr. Co., 21 BRBS 94, 97 (1988). A failure to prove suitable alternative employment results in a finding of total disability. Manigault v. Stevens Shipping Co., 22 BRBS 332 (1989).

If the employer meets its burden and shows suitable alternative employment, the burden shifts back to the claimant to prove a diligent search and willingness to work. See Williams v. Halter Marine Serv., 19 BRBS 248 (1987). If the employee does not prove this, then at the most, his disability is partial and not total. See 33 U.S.C. § 908(c); Southern v. Farmers Export Co., 17 BRBS 64 (1985).

The Court finds that Mr. Coppola has established a *prima facie* case of total disability. Dr. Glass testified that Mr. Coppola could not return to work as a longshoreman, given his physical and psychological conditions. RX-12, pp. 12, 21, 25-26. Likewise, Dr. Irving indicated in his January 18, 2001 report that it was becoming increasingly evident that Mr. Coppola would not be able to return to work as a longshoreman. CX-2.

Respondents in this case have not established the existence of suitable alternative employment. Respondents have not submitted vocational evidence of suitable alternate jobs and at most seek to rely on Dr. Glass' opinion that Mr. Coppola is capable of work in the light to selected category. RX-12, pp. 11-12. However, Dr. Glass himself opined that it was highly unlikely Mr. Coppola would be hired by someone and that the jobs he was capable of performing were "few and far between." RX-12, pp. 17-22, 27-28; Deposition Exhibit 1 for Respondent. In addition, Dr. Glass' opinion that Mr. Coppola is capable of light to selected work is contradicted by Dr. Irving's opinion that Mr. Coppola is totally disabled due to a constellation of disabilities. CX-2. Based on the foregoing, the Court finds that Respondents have not established the precise nature, terms, and availability of any realistic job opportunities within Mr. Coppola's geographical area, of which he is capable of performing and capable of securing if he diligently tried. See New Orleans Stevedores v. Turner, 661 F.2d 1031 (5th Cir. 1981); McCabe v. Sun Shipbuilding & Dry Dock Co., 602 F.2d 59 (3d Cir. 1979); Thompson v. Lockheed Shipbuilding & Constr. Co., 21 BRBS 94, 97 (1988). Therefore, the Court finds in this case that Mr. Coppola was temporarily totally

disabled from June 16, 1999 until January 18, 2001 and that Mr. Coppola has been permanently totally disabled since January 19, 2001.

AVERAGE WEEKLY WAGE

Section 10 of the Act, 33 U.S.C. § 10, sets forth three alternative methods for determining a claimant's average annual earnings, which are then divided by 52, pursuant to Section 10(d), in order to arrive at an average weekly wage. See Johnson v. Newport News Shipbuilding and Dry Dock Co., 25 BRBS 340 (1992). The determination of an employee's annual earnings must be based on substantial evidence. Sproull v. Stevedoring Servs. of America, 25 BRBS 100, 104 (1991).

Section 10(a) applies when the employee has worked in similar employment for substantially the whole of the year. See 33 U.S.C. §910(a). In this case, Mr. Coppola was injured on only his second day of work for Logistec. TR. 25-31. Therefore, the Court finds that § 10(a) is inapplicable to this case.

Because §10(a) is inapplicable, the Court will look to § 10(b). Section 10(b) calculates the average weekly wage based on similarly situated employees and applies when the injured employee did not work for substantially the whole of the year under § 10(a). See 33 U.S.C. § 910(b). The only evidence in this case on which a § 10(b) calculation can be made is the wage records of Joseph Kochiss. CX-13. Mr. Coppola asserts that Mr. Kochiss is a similarly situated employee because his date of hire at the dock in 1978 resembles Mr. Coppola's original date of hire in 1978. Such an assertion would be reasonable if one considers Mr. Coppola's employment with the dock since 1978 to be continuous. However, the evidence in this case establishes that there have been several significant gaps in the employment relationship between Mr. Coppola and the dock. Mr. Coppola testified that he worked at the dock first from 1978 to 1984. TR. 61-63. He quit in 1984 after a disagreement with his walking boss. TR. 61-62. He then worked at the dock from 1988 to 1992. TR. 61-63. He stopped working in 1992 because of an injury. TR. 63. He returned in 1994, but worked only a couple of days before quitting due to a disagreement over his positioning in the union. TR. 59, 61-63, 72. Mr. Coppola testified that he did not work at the dock at all between 1994 and 1999. TR. 60. Unlike Mr. Kochiss, Mr. Coppola's employment at the dock has been intermittent. To determine that the average weekly wage of Mr. Kochiss in 1999, in light of his 20 years of continual employment, reasonably represents the average weekly wage of Mr. Coppola in 1999, in light of the continual interruptions in his employment, would be to grant Mr. Coppola an unfair windfall. Therefore, the Court finds that Mr. Kochiss and Mr. Coppola are not similarly situated employees and that the application of § 10(b) in this case is inappropriate.

When both Sections 10(a) and (b) are inapplicable, calculation of the average weekly wage defaults to § 10(c), which allows the Court to calculate a claimant's average weekly

wage in a manner that reflects a fair and reasonable approximation of the claimant's annual wage earning capacity at the time of the injury. See 33 U.S.C. § 910(c). Mr. Coppola asserts that a fair and reasonable approximation of his average weekly wage can be obtained by multiplying his June 1999 hourly rate of $15.14 by a 35 hour work week. The Court disagrees. Such a calculation contemplates that Mr. Coppola would sustain a consistent 35 hour work week. On the contrary, Mr. Coppola's work history establishes a pattern of inconsistency, and the Court finds that an assumption that Mr. Coppola could sustain a 35 hour work week for any prolonged period of time is improper.

In this case, Respondents have been paying Mr. Coppola disability compensation at a rate of $217.95, the minimum compensation rate allowed under § 6(b) of the Act, 33 U.S.C. § 906(b). TR. 6-8. A rate of compensation of $217.95 contemplates an average weekly wage of $326.93. Mr. Coppola's wage records from 1989 to 1992, his last years of consistent employment at the dock, indicate that his earnings were far less than $326.93 per week, even after an adjustment for inflation.[5] For example, adjusting his 1989 income of $10,926.00, the greatest amount of the four years, for inflation indicates that Mr. Coppola would still have earned only $287.90 per week.[6] In addition, Mr. Coppola's employment record since 1994 has been unsteady. Mr. Coppola testified that his only significant work between 1994 and 1999 was his truck driving job for about six months at Windustrial, his part-time employment at his sister's business laying floors, and some painting work with a friend. TR. 60-61, 65, 69, 70-72. Mr. Coppola himself opined that between 1994 and 1999, he was out of work more than he was working. TR. 73. In light of Mr. Coppola's past earnings and inconsistent work history, the Court finds that a fair and reasonable approximation of Mr. Coppola's average weekly wage for his employment venture in 1999 is $326.93. Therefore, the Court finds that minimum rate of $217.95 is the proper compensation rate for Mr. Coppola in this case.

[5] Mr. Coppola's wage records from 1989, 1990, 1991, and 1992 indicate that he earned $10,926.00, $3,993.50, $4,758.50, and $7,045.58 respectively.

[6] The Court arrived at this figure by: (1) dividing $10,926.00 by 52 weeks to determine Mr. Coppola's average weekly earnings in 1989, which amounted to $210.12; and (2) adjusting $210.12 for inflation by calculating the proportion: $210.12/$318.12 = *x*/$435.88, with $318.12 representing the National Average Weekly Wage for the bulk of 1989 and $435.88 representing the National Average Weekly Wage on June 15, 1999.

REASONABLE AND NECESSARY MEDICAL EXPENSES

Section 7(a) of the Act provides that:

> (a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process or recovery may require. 33 U.S.C. § 907(a).

In order for a medical expense to be assessed against the employer, the expense must be both reasonable and necessary. Parnell v. Capitol Hill Masonry, 11 BRBS 532, 539 (1979). Medical care must be appropriate for the injury. 20 C.F.R. § 702.402. A claimant has established a *prima facie* case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work-related condition. Turner v. Chesapeake & Potomac Tel. Co., 16 BRBS 255, 257-258 (1984). The claimant must establish that the medical expenses are related to the compensable injury. See Pardee v. Army & Air Force Exch. Serv., 13 BRBS 1130 (1981); See Suppa v. Lehigh Valley R.R. Co., 13 BRBS 374 (1981). The employer is liable for all medical expenses which are the natural and unavoidable result of the work injury, and not due to an intervening cause. See Atlantic Marine v. Bruce, 661 F.2d 898, 14 BRBS 63 (5th Cir. 1981), aff'g 12 BRBS 65 (1980).

An employee cannot receive reimbursement for medical expenses unless he has first requested authorization, prior to obtaining treatment, except in cases of emergency or refusal/neglect. 20 C.F.R. § 702.421; See also Shahady v. Atlas Tile & Marble Co., 682 F.2d 968 (D.C. Cir. 1982)(per curiam), rev'g 13 BRBS 1007 (1981), cert. denied, 459 U.S. 1146 (1983); See McQuillen v. Horne Brothers Inc., 16 BRBS 10 (1983); See Jackson v. Ingalls Shipbuilding, 15 BRBS 299 (1983). The Fourth Circuit has reversed a holding by the Board that a request to the employer before seeking treatment is necessary only where the claimant is seeking reimbursement for medical expenses already paid. The court held that the prior request requirement applies at all times. See Maryland Shipbuilding & Drydock Co. v. Jenkins, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1979), rev'g, 6 BRBS 550 (1977).

Because Mr. Coppola has established that he suffered employment-related injuries to his left hip and left wrist, Mr. Coppola is entitled to all past and future compensable medical benefits arising from those conditions.

SECTION 8(F) SPECIAL FUND RELIEF

Section 8(f) shifts part of the liability to pay compensation for permanent disability or death from an employer to the Special Fund established in § 44 of the Act when the disability or death is not due solely to the injury that is the subject of the claim. See Wiggins v. Newport News Shipbuilding & Dry Dock Co., 31 BRBS 142, 146 (1997); 33 U.S.C. § 908

(f) and § 944. To be entitled to compensation under § 8(f) when the employee is permanently totally disabled, the employer must establish that the employee seeking compensation had: (1) an "existing permanent partial disability" before the employment injury; (2) that the permanent partial disability was "manifest" to the employer; and (3) that the current disability is not due solely to the employment injury. Two "R" Drilling Co. v. Director, OWCP, 894 F.2d 748, 750, 23 BRBS 34, 35 (CRT) (5th Cir. 1990); Director, OWCP v. Campbell Industries Inc., 14 BRBS 974, 976 (9th Cir. 1982), cert. denied, 459 U.S. 1104, 113 S.Ct. 726, 74 L.Ed. 2d 951 (1983); 33 U.S.C. § 908(f)(1).

With respect to the requirement of an existing permanent partial disability, the term "disability" in § 8(f) can be an economic disability under § 8(c)(21) or one of the scheduled losses specified in §§ 8(c)(1)-(20), but it is not limited to those cases alone. C & P Tel. Co. v. Director, OWCP, 564 F.2d 503, 513 (D.C. Cir. 1977) "Disability" under § 8(f) is necessarily of sufficient breadth to encompass those cases wherein the employee had such a serious physical disability in fact that a cautious employer would have been motivated to discharge the handicapped employee because of a greatly increased risk of an employment-related accident and compensation liability. Id.

The evidence in this case establishes that Mr. Coppola had an existing permanent partial disability before his June 15, 1999 work-related injuries. First, Mr. Coppola had a pre-existing permanent partial disability with respect to his spine. In a July 1, 1993 report, Dr. Kramer opined that Mr. Coppola had a 15% permanent partial impairment of the cervical spine on the basis of his chronic cervical strain syndrome and radiculitis. RX-7, p. 12; CX-12. In a December 9, 1993 report, Dr. Kramer indicated that Mr. Coppola had a 10% permanent partial impairment of his lumbar spine on the basis of his chronic lumbar strain symptoms and left lower extremity radiculitis. RX-7, p. 17; CX-12. Based on Dr. Kramer's reports, Dr. Glass indicated that Mr. Coppola had a permanent partial physical impairment that pre-existed his injury of June 15, 1999. RX-12, pp. 8-9.

In addition, VA records from May 1997 to June 1997 document that Mr. Coppola had developed a hearing problem in his right ear related to a 1971 motorcycle accident. RX-9, pp. 1,3. Likewise, VA records from August 1996 to August 1999 document that Mr. Coppola suffered from PTSD as a result of his experience in the Vietnam War. RX-10. Based on the foregoing, the Court finds that a cautious employer would determine that Mr. Coppola's pre-existing spinal, aural, and psychiatric disabilities greatly increased its risk of an employment-related accident and compensation liability. Therefore, the Court finds that Mr. Coppola's pre-existing disabilities are sufficient to satisfy the first requirement under § 8(f).

With respect to the requirement of manifest knowledge by the employer, it is well established that a pre-existing disability will meet the manifest requirement of § 8(f) if prior to the subsequent injury, employer had actual knowledge of the pre-existing condition or there were medical records in existence prior to the subsequent injury from which the condition was

objectively determinable. Wiggins v. Newport Shipbuilding & Dry Dock Co., 31 BRBS 142, 147 (1997); Esposito v. Bay Container Repair Co., 30 BRBS 67, 68 (1996). The medical records pre-existing the subsequent injury need not indicate the severity or precise nature of the pre-existing condition in order for the manifest requirement to be satisfied; rather, medical records will satisfy this requirement as long as they contain sufficient, unambiguous and obvious information regarding the existence of a serious lasting physical problem. Wiggins, 31 BRBS at 147; Espositio, 30 BRBS at 69. In addition, the pre-existing disability need not be manifest at the time of hiring, but only at the time of the compensable subsequent injury. Director, OWCP v. Cargill, Inc., 709 F.2d 616, 619, 16 BRBS 137, 139 (CRT)(9th Cir. 1983)(en banc).

In this case, there are medical records that establish the existence of Mr. Coppola's permanent partial disability prior to his June 15, 1999 work-accident. Medical records from Dr. Kramer in 1993 and the VA in the 1996 and 1997 detail Mr. Coppola's various pre-existing disabilities, as described above. RX-7; RX-9; RX-10; CX-12. The Court finds that the existence of Mr. Coppola's pre-existing disabilities was objectively determinable based on these reports. Because medical evidence prior to June 15, 1999 is available from which the second requirement under § 8(f) is satisfied, the Court finds Mr. Coppola's pre-existing permanent partial disability was manifest to Logistec before Mr. Coppola's June 15, 1999 work-accident.

The third element under § 8(f) requires EB to establish that Mr. Coppola's current disability is not due solely to his June 15, 1999 employment injury. This requirement is also met. Dr. Glass opined that given Mr. Coppola's spinal condition as documented in Dr. Kramer's reports, Mr. Coppola's work injury on June 15, 1999 was not the sole cause of his current disability. RX-12, pp. 14, 16. Dr. Glass explained that before the June 15, 1999 injury, Mr. Coppola had a bad neck and a bad back and that after the June 15, 1999 injury, he had also a bad knee and a bad wrist. RX-12, p. 15. Based on the June 15, 1999 accident, Dr. Bernstein assigned Mr. Coppola a 10% impairment of the hand and wrist and Dr. Irving assigned him a 15% impairment of the left hip. CX-2; CX-5.

Dr. Irving opined in his January 18, 2001 report that Mr. Coppola's disability was not based solely on his hip injury, but instead was based on a constellation of medical issues, including pre-existent conditions such as PTSD, hearing loss in his right ear, and a 15% permanent partial disability of his spine and back. CX-2. Dr. Rubenstein concurred with Dr. Irving's assessment that Mr. Coppola suffered from a "constellation of disabilities" and indicated that no one factor fully accounted for Mr. Coppola's disability. RX-11, p. 4. Dr. Rubenstein also indicated that Mr. Coppola's psychiatric conditions are in part responsible for Mr. Coppola's low level of functioning. RX-11, p. 4. Based on the foregoing, it is apparent that Mr. Coppola's current disability was not caused solely by his employment-related hip and wrist injuries on June 15, 1999. Therefore, the Court finds that Mr. Coppola's pre-existing conditions contribute at least in part to his current disability, thereby fulfilling

the third requirement under § 8(f). Given the above analysis, the Court finds that Logistec has met all the requirements under § 8(f) and is entitled to relief under that section.

Accordingly,

ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that:

1) Employer/Carrier shall pay to Claimant compensation for temporary total disability benefits from June 16, 1999 until January 18, 2001, based on a compensation rate of $217.95.

2) Employer/Carrier shall pay to Claimant compensation for permanent total disability benefits, based on a compensation rate of $217.95, commencing January 19, 2001 and continuing for a period of 104 weeks, after which time such permanent partial disability benefits shall be paid from the Special Fund pursuant to Section 8(f) of the Act.

3) Employer/Carrier shall pay to Claimant interest on any unpaid compensation benefits. The rate of interest shall be calculated at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average auction price for the auction of 52 week United States Treasury bills as of the date of this decision and order is filed with the District Director. See 28 U.S.C. §1961.

4) Employer/Carrier shall be entitled to a credit for all payments of compensation previously made to Claimant.

5) Employer/Carrier shall pay or reimburse Claimant for all reasonable and necessary past and future medical expenses, with interest in accordance with Section 1961, which are the result of Claimant's June 15, 1999 injuries.

6) Claimant's counsel shall have thirty days from receipt of this Order in which to file a fully supported attorney fee petition and simultaneously to serve a copy on opposing counsel. Thereafter, Employer shall have thirty (30) days from receipt of the fee petition in which to file a response.

So ORDERED.

A

RICHARD D. MILLS
Administrative Law Judge